

Chapter 38

RAILROADS*

Sec. 38-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Major street.* Any street within the city which:
 - a. Is a through or express street as designated by the city traffic engineer on the express street plan pursuant to section 45-39(a) of this Code; or
 - b. Has a traffic count of ten thousand (10,000) motor vehicles or more per day over any railroad track intersecting it, where the total traffic count is the total of the number of vehicles crossing the railroad track from each direction per day.
- (2) *Person in charge.* That physical person accompanying a train who is empowered to direct its operations.
- (3) *Principal officer or manager.* The principal person in charge of all operations of a railroad company in the city.
- (4) *Railroad company.* Any individual, partnership, association, corporation, trustee, receiver or other person that lays out, constructs, maintains or operates any railroad or operates any trains, engines or cars on a line of railway in the city.
- (5) *Switch train.* Any train engaged solely in moving freight or passenger cars within the city from one railroad yard to another railroad yard, or in the same railroad yard, or in transferring railroad cars to and from the various switch tracks or spur tracks within the city. A switch train is distinguished from a through passenger or freight

train operating intrastate or interstate into or through the city.

(Code 1968, § 39-1; Ord. No. 82-1854, § 1, 11-23-82; Ord. No. 90-635, § 79, 5-23-90; Ord. No. 93-514, § 57, 5-5-93)

Sec. 38-2. Permit to lay tracks.

No railway company shall lay tracks within the limits of the city without a special permit from the city council being first had and obtained. It shall be the duty of the city engineer to examine and report on each application for such permit as to the advisability of granting such permit.

(Code 1968, § 39-2; Ord. No. 90-635, § 80, 5-23-90)
Charter reference—Authority to regulate construction of railroad tracks, Art. II, § 5.

Sec. 38-3. Map and profile required before grant of right-of-way.

(a) No right-of-way over any of the streets within the city shall be granted to any railway company unless a map and profile of the grades along the streets named shall accompany the application and ordinance granting the right-of-way. It shall be the duty of the city engineer to inspect any and all such maps and profiles and report the result of his investigation as soon thereafter as possible to the city council, and no right-of-way shall be granted until such examination shall be made and reported upon in order to better protect the rights of property owners along the several streets; provided, that there shall be no costs attached to the city.

(b) When a railroad company applies to renew a franchise to cover existing track or tracks, including tracks which cross a street or streets, the city engineer, with the concurrence of the director of the department of finance and administration, may waive the requirement for filing a profile of the grades along or across the streets named in the application by filing a written recommendation with the city council to be attached to said

*Charter reference—Authority of city over railroads, Art. II, §§ 5, 5a, 16(g), (p), (t).

Cross references—Blowing of steam whistle, § 30-16; streets and sidewalks, Ch. 40.

application, provided that the railroad company shall furnish said profile upon the request of the city engineer.

(Code 1968, § 39-3; Ord. No. 70-177, § 1, 2-4-70; Ord. No. 87-851, § 1, 6-2-87; Ord. No. 90-635, § 80, 5-23-90)

Cross reference—Official survey system, § 33-61 et seq.

Sec. 38-4. Duty to reconstruct or construct grade crossings.

(a) It is hereby made the duty of each railroad company owning, controlling, maintaining or operating railroad tracks crossing a public street at a grade within the corporate limits of the city to reconstruct (in case of existing tracks) and to construct (in the case of future tracks) any and all such tracks according to the various categories of streets set forth below. Once tracks crossing a street have been reconstructed or constructed according to said categories, it shall be the duty of each railroad company to keep any and all such tracks, at all times thereafter, in a good and safe condition until said grade crossing is again reconstructed in compliance with this section 38-4.

(b) There are hereby established three (3) categories of street crossing to be used by each railroad company when reconstructing or constructing a grade crossing:

- (1) *Category I:* Major street, as defined in section 38-1 of this chapter.
- (2) *Category II:* Any public street which has a traffic count of three thousand five hundred (3,500) or more but less than ten thousand (10,000) motor vehicles per day over the railroad track, where the traffic count is the total of the number of vehicles crossing the railroad track from each direction.
- (3) *Category III:* Any public street other than Categories I and II above.

(c) Each railroad company shall reconstruct or construct grade crossings over public streets in Categories I and II using not less than the standard permanent type materials such as steel; steel reinforced molded rubber; high density polyethylene; full depth timber or other permanent type

materials acceptable to the director of the department of public works and engineering.

(d) Each railroad company shall reconstruct or construct grade crossings over public streets in Category III using not less than the standard plain bituminous materials.

(e) It shall be the duty of the traffic engineer to conduct a survey and study of all existing railroad crossings in the city, and, from this survey and study, to compile and maintain a list or lists of all such crossings, together with the name of each railroad company owning or controlling each crossing and the type of crossing required under subsections (c) and (d). The list for each railroad company shall rank the crossings in the order of priority to be reconstructed in accordance with subsections (c) and (d) hereof, and it shall be the duty of each railroad company to secure these lists from the traffic engineer and to commence and complete a program of systematic reconstruction of all such crossings.

(f) In addition to the systematic reconstruction required in subsection (e) hereof, the traffic engineer may, from time to time, notify a railroad company that a particular track (or tracks) crossing a street is in such state of disrepair that it must be reconstructed in compliance with subsections (c) and (d) hereof, regardless of the priority assigned to such crossing, and the railroad company shall thereafter start and complete such reconstruction within a reasonable time, but in no event shall such time exceed one hundred twenty (120) days.

(g) Any railroad company that disagrees with any decision made by the traffic engineer under this section shall have ten (10) days from the date it was notified of that decision by the traffic engineer to appeal such decision to a three-member board to be known as the grade crossing review board. Such board shall be composed of the directors of the departments of public works and engineering, finance and administration, and planning and development or their designees. The director of the department of public works and engineering or designee shall serve as chairman of the grade crossing review board and notify the appealing railroad company in writing of the time and place for hearing such appeal.

(h) At the time and place designated for such hearing, the appealing railroad company and the traffic engineer shall attend and present all relevant facts concerning the decision under appeal.

After considering all the facts and circumstances presented at the hearing, the grade crossing review board, by a majority vote, shall issue a decision in writing to both parties upholding, modifying or overruling the decision of the traffic engineer. Such written decision shall be made within five (5) days after the date of the hearing and the decision of the grade crossing review board shall thereafter be complied with as the decision of the traffic engineer.

(i) Any railroad company violating any of the provisions of this section 38-4 may be enjoined or mandamus by a suit filed by the city in a court of competent jurisdiction, and this remedy shall be in addition to other penalty provisions.

(Code 1968, § 39-4; Ord. No. 82-1954, § 2, 11-23-82; Ord. No. 85-297, § 1, 3-5-85; Ord. No. 90-635, § 81, 5-23-90; Ord. No. 93-514, § 58, 5-5-93)

Charter reference—Authority to require railroad to construct crossings, Art. II, § 5.

Sec. 38-5. Mayor authorized to execute license agreements for crossing right-of-way by city water and sewer lines.

The mayor is authorized to execute and the city secretary to attest license agreements with railroad companies operating in the city, for the crossing by the city of the railroad right-of-way with sewer and water lines, where such license agreements are on the usual and customary forms furnished by the railroad company concerned, where the consideration to be paid by the city does not exceed ten dollars (\$10.00) in any one year, and where no special or extraordinary obligations are incurred by the city over and above those normally contained in the usual and customary printed form of license agreement.

(Code 1968, § 39-5)

Sec. 38-6. Provisions governing franchise to construct and use railroad tracks across public streets.

The right, privilege and franchise, which may be granted by separate ordinance to a railroad

company ("the company"), to permit its construction, use and maintenance of railroad track(s) upon and across public street(s) within the corporate limits of the city for the purpose of operating its trains, engines and cars thereon, shall, when granted, be granted subject to and upon the following provisions and requirements, and the company, by accepting the franchise, covenants and agrees to be bound by and to observe and perform each and all of the following provisions and requirements, which shall for all purposes be deemed to be a part of the granting ordinance as if set forth verbatim, therein:

(a) Without limiting the scope or application of any other provision hereof, the company's installation of and all later activities with respect to the tracks:

(1) Shall comply with all matters set forth in the construction plans for same which have been reviewed and approved by the city engineer including, but not limited to, all matters added to or deleted from such plans by or at the request of the city engineer or for the purpose of obtaining his approval thereof, such plans to be identified by drawing number in the granting ordinance; and

(2) Shall be performed to the satisfaction of the city engineer.

(b) The company shall construct its tracks so as not to interfere with drainage across and along any public street, and the company shall construct and maintain all ditches, drains and culverts necessary to the proper drainage of those parts of any street occupied by the tracks, as determined by the city engineer. The company shall construct each crossing in compliance with the applicable specifications as set forth in section 39-4, and shall construct, repair and maintain the paving in the entire remainder of the franchise area described in the granting ordinance (on both sides of each crossing) in such manner and with such material as determined and ordered by the city engineer.

(c) The city reserves and shall have the right to install any sewer line, water line or other

utility lines or facilities of any kind whatever under, over or across the tracks, or to make any other lawful use of the streets where same are located. The company shall reimburse the city for that portion of the cost of construction of any new such facilities, and that portion of the cost of maintenance, repair or replacement of any city utility facilities existing at the time the franchise is granted, which would not have been incurred by the city except for the presence of the tracks. The city engineer shall determine the amount of such portion of cost to be paid by the company, and his determination thereof shall be final. Where a sewer line, water line or other utility lines or facilities of any kind whatever are occasioned by the presence of the tracks, the total cost of such lines or facilities shall be borne by the company. Standard railroad cross bucks shall be installed by the company on the right side of each approach to each crossing, unless the city directs that other or additional safety protective devices be installed.

- (d) The company shall in no instance allow its use of the rights granted to it under the franchise to endanger the streets where the tracks are located, or the use thereof by the city or the public. Should the company's use of its rights under the franchise ever damage such streets or any other property of the city, the company shall promptly repair and restore same to the condition in which it existed, and to the usefulness which it possessed, prior to the occurrence of such damage.
- (e) In consideration of the grant of franchise, the company shall annually pay to the city, per track, the fixed fee of one hundred dollars (\$100.00), plus the charge of seventy-five dollars (\$75.00) for the first one hundred twenty-five (125) feet (or fraction thereof), and an additional twenty-five dollars (\$25.00) for each additional one hundred (100) feet (or fraction thereof), of occupancy of public street right-of-way. The payment to be made for the year in which

acceptance of the franchise occurs shall be the greater of:

- (1) A proportioned amount of the total of the one hundred dollar (\$100.00) fixed fee plus the per-foot charge, computed as set forth above, according to the time remaining from the effective date of the ordinance granting the franchise until the next succeeding first day of January; or
- (2) One thousand dollars (\$1,000.00).

The payment to be made for each succeeding year shall be the full amount of the total of the one hundred dollar (\$100.00) fixed fee plus the per-foot charge, computed as set forth above. The first such payment shall be made within thirty (30) days after the effective date of the granting ordinance, and subsequent annual payments shall be made on the first day of January of each year thereafter during the term of the franchise.

- (f) The franchise shall not take effect until after the expiration of thirty (30) days after the granting ordinance has been duly passed by the city council and has been approved by the mayor, and then only if, within such time, the company has filed with the city secretary written acceptance of the franchise. The franchise shall be for a term of fifteen (15) years commencing as of the effective date thereof, unless some shorter term is specified in the granting ordinance.
- (g) The city reserves and shall have the right (without limitation) to require that automatic flasher warning signals, or other or additional safety protective devices, be installed at each crossing on such conditions as the city council, acting pursuant to and in accordance with the authority and provisions of the constitution and general laws of the state, and of the Charter and ordinances of the city, shall direct.
- (h) The company shall not, wholly or in part, transfer, assign or otherwise dispose of the franchise, or its rights thereunder, without the express written consent of the city having been first obtained. To obtain the

city's consent, the company must file its request therefor, together with a true copy of the proposed instrument of transfer, with the director of finance and administration, who shall make a recommendation thereon to the city council. Upon consent by the city to the transfer or assignment, each provision of the franchise shall be binding upon, and inure to the benefit of, the transferee or assignee of the company.

- (i) The company may voluntarily terminate the franchise at any time by giving the city sixty (60) days' written notice thereof. However, failure to commence installation of the tracks within ninety (90) days after the franchise takes effect; or later abandonment or discontinuance of use of the tracks; or default in the payment of any taxes or lawful charges due thereon; or violation of or failure to comply with any of the provisions or requirements of the granting ordinance, or any of the provisions of the Constitution and general laws of the state, or of the Charter and ordinances of the city, insofar as they relate to the franchise granted, shall, at the option of the city, annul the franchise and work as a forfeiture of all rights and privileges granted therein, which shall thereupon refer to and vest absolutely in the city.
- (j) Upon termination of the franchise under any circumstances, the company shall remove the tracks from the streets where located, and replace the streets in such condition and repair as shall be determined and ordered by the city engineer. Should it fail to remove the tracks, the company consents to any damage to, dismantling of, or paving over the tracks which might occur after such termination of the franchise or its rights thereunder, and further releases the city from all liability for or because of any such damage, dismantling or paving over, which might occur after such termination.
- (k) The exercise of any and all rights, and the fulfillment of any and all requirements or obligations, under the franchise shall be at

the sole and complete expense and liability of the company. Further, the company agrees that it will defend, indemnify and hold the city free and harmless from and against any and all loss, claims, liability, recoveries and/or expense which may be asserted against, incurred by or involve the city in any manner whatever because of:

- (1) The grant of franchise to the company; or
- (2) The company's exercise of any rights granted to it, or fulfillment of any requirement or obligation imposed on it, thereunder.

(The word "city," in this paragraph means the city, its officers, agents, contractors and employees.)

- (l) The franchise shall be subject to all existing laws and ordinances, and to such laws and ordinances as may be enacted hereafter. Nothing shall be considered as a waiver of any power of regulation of public utilities vested in the city by the Constitution and general laws of the state, or the Charter and ordinances of the city. No requirement added to those stated hereunder for the franchise, whether now or subsequently authorized by law, shall be defeated by the company on the ground that the ordinance granting the franchise and the acceptance thereof constitutes a contract, the obligation whereof is impaired by such additional requirement.
- (m) Should the city council find that public convenience and necessity require the removal of the tracks installed pursuant to the franchise, city council reserves and shall have the absolute right to terminate the franchise. Termination in such event may be effected only by ordinance passed by the city council, and the termination shall not be effective until sixty (60) days after the company's receipt of written notice thereof delivered to it by registered mail at the address for the company recited in the granting ordinance.

(Code 1968, § 39-6; Ord. No. 73-1218, § 1, 6-27-73; Ord. No. 82-972, § 1, 6-15-82; Ord. No. 82-1174, §

1, 7-27-82; Ord. No. 82-1854, § 3, 11-23-82; Ord. No. 90-635, §§ 82-84, 5-23-90)

Sec. 38-7. Drainage improvements; maintenance and repair of streets, bridges, etc.

(a) It shall be the duty of all railroad companies whose lines of road are constructed on, over or across any street or part of a street or land in the city to make, construct and maintain, under the supervision of the city engineer and in accordance with plans and specifications to be furnished by the director of public works and engineering, all such drains, culverts, waterways, ditches, sewers and such other connections as shall be deemed necessary by the city council to properly drain the streets and lands on, over or across which such railway line is constructed, and to conduct the water into some proper sewer, and, if necessary, conduct such water outside the city limits.

(b) It shall be the duty of each railroad company whose lines of road are constructed within the corporate limits of the city to keep all streets, or parts of streets, through or over which its lines of road may run, free from obstructions of every kind.

(c) It shall be the duty of each railroad company to construct and keep in good repair all bridges and crossings over all ditches, sewers and culverts on the lines of its railway, and to fill up and grade all sinks and gullies adjacent to or on the lines of its road; which work and improvements shall be done and made under the direction and supervision of the city engineer, and in such manner and of such material and at such points as may be required by him.

(d) In any case where an improvement contemplated by this section is deemed necessary by the city engineer, he shall prepare or cause to be prepared plans and specifications as to the several practicable ways, if more than one (1) exists, in which such improvement can be made. Such plans and specifications shall be submitted to the city council, together with a recommendation that such improvement is necessary. If the recommendation appears reasonable, the council shall make an order directing the city secretary to notify the officer or agent having an office in the city and

having direct charge and control of the operations of the railroad company within the corporate limits of the city, to appear before the council at a date and place fixed in such order to show cause, if any it can, why such improvement should not be constructed without delay in accordance with one (1) or the other of such plans and specifications so submitted.

(e) At the time and place stated for the hearing provided for in this section, the city council shall hear evidence as to the necessity for such improvements and as to the best plan for carrying out the same. Evidence should also be heard as to the reasonable and proper length of time which will be required to complete such improvements. After the conclusion of such hearing, the council shall, by ordinance, order the improvement made, and it shall also approve the plans and specifications deemed to be most suitable and practical for the work therein ordered to be done, which ordinance shall also designate a date at which such improvements shall be completed and order same to be completed (within such time), and the city engineer shall notify the city secretary upon completion or failure to complete such improvements within the time designated. A copy of such ordinance, together with a copy of the plans and specifications for such work as approved by the council, authenticated by the certificate of the city secretary, shall be mailed to the officer or agent having an office in the city and having direct charge and control of the operations of the railroad company within the corporate limits of the city. Such notice shall be addressed to the main office of the railroad company in the city.

(f) It shall be unlawful for the officer or agent of the railroad company having an office in the city and having direct charge and control of the operations of the railroad company within the corporate limits of the city to fail, refuse or neglect to construct and complete the improvements ordered by the city council within the specified time. Any such failure, refusal or neglect shall be punished by a fine as provided in section 1-6 of this Code and each day such violation is continued shall constitute a separate offense. The failure, refusal or neglect to construct and complete the improvements ordered by the city council within the specified time shall also be deemed the failure, refusal

or neglect of the railroad company, and such company shall be liable to the city for a civil penalty of fifty dollars (\$50.00) per day of each day that such failure, refusal or neglect shall continue. The city shall have the right to institute civil suits for the recovery of such penalties, or to maintain criminal prosecutions or to pursue both of such remedies, the adoption of one course of procedure not to be deemed an abandonment of its right to proceed under both.

(Code 1968, § 39-7; Ord. No. 82-1854, §§ 4, 5, 11-23-82; Ord. No. 90-635, § 85, 5-23-90; Ord. No. 93-514, § 59, 5-5-93)

Charter reference—Authority to require railroads to maintain streets, etc., Art. II, § 5.

Sec. 38-8. Separation of railroad grade from street grade.

(a) Wherever the city council shall find that a public necessity exists for a determination as to whether the public safety requires the separation of the grade of any railroad from the grade of any street crossed by such railroad within the corporate limits of the city, such inquiry shall be made as follows:

- (1) The city council shall pass a resolution finding that a public necessity exists for a determination as to whether the public safety requires such grade separation, describing the location of such street and of such railroad. The city council in such resolution shall call a public hearing, but no such hearing shall be set for any date prior to the elapse of fifteen (15) full days from the date of the passage of the resolution. The city secretary shall forward a certified copy of such resolution to the principal officer of the railroad company in the city by registered United States mail, or by causing the same to be delivered to the principal office of such company by some officer or employee of the city.
- (2) At the time and place set in such resolution, the city council shall assemble in public meeting and proceed with such hearing. The city attorney shall represent the city in such hearing. The railroad company shall be heard fully upon the questions presented.

- (3) The city council is empowered, in its discretion, to permit the giving of evidence by any other person interested in or affected by the proposed grade separation.
- (b) At such public hearing, the city council shall determine the following:
 - (1) Whether the safety of the public requires a separation of the grade of the railroad from the grade of the street at the crossing in question.
 - (2) If such separation is required, the most practical and feasible plan to be adopted for such separation, whether by one or more of the following methods:
 - a. Lowering of the present grade of the tracks of the railroad below the grade of the street.
 - b. Elevating or raising the tracks of the railroad so as to bridge the grade of the street.
 - c. Constructing an underpass so that the street shall pass under the railroad.
 - d. Constructing an overpass so that the street shall pass over the tracks of the railroad.
 - (3) Whether any additional lands or rights-of-way are required for the construction of such project, and the estimated cost of acquiring same.
 - (4) A determination as to how the cost of the construction of the entire project shall be apportioned, whether all of the same shall be paid by the railroad company, or all by the city, or part by the company and part by the city.
 - (c) When all evidence has been received at such public hearing by the city council, the city council shall close the same and proceed to a determination of the fact issues presented. If the city council shall find that the public safety requires such grade separation, it shall cause plans and specifications to be prepared showing how the work is to be constructed and shall embody its findings and orders in an ordinance ordering the separation of

the grade and the payment of the costs incident thereto.

(Code 1968, § 39-8)

Charter reference—Authority to regulate grade separation, Art. II, § 5.

Sec. 38-9. Obstructing street or crossing.

Any officer, agent, servant or receiver of any railway corporation who willfully obstructs for more than five (5) minutes at any one time any street, railway crossing or public highway by permitting a train to stand on or across such crossing, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(Code 1968, § 39-9; Ord. No. 75-486, § 1, 3-26-75; Ord. No. 92-1449, § 52, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 38-10. Report of obstructed crossings.

(a) It shall be the duty of the yardmaster, engineer, conductor and every other person in any manner controlling or operating any railway locomotive, engine, car or train of cars, including the resident superintendent, general manager, president or receiver of such railway company, to report in writing to the traffic engineer, within one (1) week thereafter, all obstructions of public crossings in the city by a railway locomotive engine, car or train of cars coming within his knowledge or jurisdiction, specifying particularly the period of time for which such public crossing was blocked, the number of the engine and the name of the engineer or conductor of such engine, car or train of cars, if available.

(b) Whenever the traffic engineer shall receive information from the police department or any other person that a major street has been blocked at a railroad crossing by a switch train for a longer period than five (5) minutes at one time, he is hereby authorized and empowered to serve a demand in writing upon the principal officer or manager of any railroad company believed by him to be operating trains upon such railroad at such

crossing to make a report in writing containing the following information:

- (1) Whether the railroad company operated a switch train or trains, at or about the time or times specified in the traffic engineer's demand on the railroad crossing the major street at the intersection in question.
- (2) If so, the number assigned to the engine and to the train, if any.
- (3) The correct legal name of the railroad company operating such switch train.
- (4) The name of the person in direct charge of such switch train and the movements thereof.

The report shall be filed in the office of the traffic engineer not later than 5:00 p.m. of the day following the day of service of his written demand, unless such following day shall fall on a Saturday or a Sunday, in which case the report shall be filed on the following Monday by 5:00 p.m. If the following day shall fall on a legal holiday established by the city council upon which day the city hall is closed for business, the report shall be filed on the next day thereafter when the city hall shall be open. Such report shall be in writing and signed by the principal officer or manager of the railroad company in the city.

(Code 1968, § 39-10; Ord. No. 90-635, § 86, 5-23-90; Ord. No. 93-514, § 60, 5-5-93)

Sec. 38-11. Gates, guards and other protection at crossings generally.

(a) Whenever, on any street or sidewalk crossed by the tracks of any railway company, the city council deems it necessary to provide protection to persons and property at such crossings by the erection and maintenance of gates, guards or other protection, the council may so declare and direct that such railway company shall, within a certain time to be fixed by the council, erect, construct and maintain a sufficient safeguard of such character at such crossings, specifying the kind of protection to be erected, constructed and maintained, whether it be a gate, guard or other protection,

and it shall be the duty of the city secretary to serve upon such company named in such resolution a certified copy thereof within ten (10) days after passage of such resolution, leaving a copy thereof with the local agent of such company in the city, or at the general office of such company.

(b) Every gate, guard or other protection, and the approaches thereto, when ordered as provided by this section, shall be erected and constructed at the sole cost and expense of the railroad company, under the supervision of the city engineer and the same shall thereafter be kept and maintained by such railroad company in proper repair and condition at its own cost and expense, and without cost or expense to the city, and under the supervision of the traffic engineer.

(c) Whenever any railroad company shall have been directed by the city council to erect, construct and maintain at any street or sidewalk crossed by its tracks, any gates, guards or other protection, as provided in this section, such company shall, within the time prescribed in such resolution, construct and thereafter maintain the protection specified in such resolution, under a civil penalty of one hundred dollars (\$100.00) for every failure so to do, and each and every ten (10) days after the expiration of the time so fixed for the construction of such protection that any company shall refuse or neglect to proceed with the erection and construction of the kind of protection specified shall constitute a separate and distinct offense, and incur a separate penalty. The city shall have the right to institute civil suits for the recovery of such penalty.

(Code 1968, § 39-11; Ord. No. 90-635, § 87, 5-23-90)

Sec. 38-12. Closing of crossing gates and guards.

Whenever any gate or guard has been erected under the provisions of this chapter, it shall be the duty of the railway company on whom devolves the duty of maintaining and operating the same to keep the same securely closed at the approach of and during the passage of any railway train across the part of the street or sidewalk it is designed to protect; provided, that the crossing shall not be kept closed longer than five (5) minutes at any one time, and any railway company

violating the provisions of this section shall be subject to a criminal penalty of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(Code 1968, § 39-12; Ord. No. 92-1449, § 53, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 38-13. Flagmen at crossings.

It shall be the duty of each railway company operating a railroad within the corporate limits of the city to keep, by day and night, at such public crossings as may be designated from time to time by the city council, one (1) or more flagmen, whose duty it shall be to warn traffic of the approach of trains, and to see that such crossings are kept free of standing trains, locomotives and other obstructions, except at crossings where the railroad company maintains electric warning devices approved by the traffic engineer.

(Code 1968, § 39-13; Ord. No. 90-635, § 88, 5-23-90)

Charter reference—Authority to regulate crossings, Art. II, § 5.

Sec. 38-14. Lighting of crossings.

(a) It shall be the duty of each railroad company customarily and regularly operating trains at night within the city over and across the public streets in the city to erect, establish, keep and maintain an electric light, when and as may be ordered by the city council, at each crossing that is designated by the city council. Such electric light shall be of not less than fifty (50) watts, and shall be not more than seventy-five (75) feet distant from the nearest rail at such crossing and not less than twenty-two (22) feet distant from the ground.

(b) The crossings where electric lights are required to be erected, established, kept, lighted and maintained in accord with this section shall be designated by the city council by resolution passed by it after a finding by the city council that trains are customarily and regularly operated over each such crossing at night, and that a necessity exists for the erection, establishment and maintenance of an electric light at such crossing for the protec-

tion of the safety and security of persons traveling over the same.

(c) At crossings where electric lights are required to be erected, established, kept and maintained in accord with this section, such lights shall not be required to be kept burning nor lighted during such hours, or parts of hours, when the lights in use for lighting the city streets shall not be lighted or burning. The purpose of this subsection is to exempt the railroad company from lighting such crossing at any time the streets of the city are not lighted.

(d) Should any standard safety device be installed, designed to warn citizens and other travelers of the approach of a train, and to provide for their safety and security, or should a watchman be placed to accomplish this purpose, at any crossing designated by the city council for the erection of electric lights, the provisions of this section shall not apply and such provisions shall become inoperative as to such crossing.

(e) Any railroad company or person operating a railroad in the city who shall fail to keep and maintain such lights as are hereinbefore provided for when required to do so by proper resolution of the city council, or who shall fail to comply with the provisions of this section, shall be liable to the city for a fine which may be imposed as provided in section 1-6 of this Code, which penalty shall be recoverable by and in the name of the city by a suit in any court of competent jurisdiction.
(Code 1968, § 39-14)

Charter reference—Authority to regulate crossings, Art. II, § 5.

Sec. 38-15. Cumulative provisions relating to lighting at railroad crossings.

(a) Regardless of whether trains are customarily and regularly operated over a railroad crossing at night, the city council may determine that a necessity for such lighting exists in which event the railroad company operating such crossing shall erect, establish and maintain at its sole cost and expense an electric light for the protection of the safety and security of persons traveling over such crossing.

(b) The city may participate with the railroad companies in paying for up to one-half of the cost

of electrical power for lighting at all railroad crossings within the City. This provision may be invoked by adopting a resolution which shall state:

- (1) The crossing or crossings required to be lighted under the provisions of this section;
- (2) The name or names of the railroad company or companies operating such crossing or crossings; and
- (3) The share of the electrical bill, up to one-half that the city will pay.

(c) The city secretary shall mail a certified copy of such resolution, return receipt requested, to each railroad named in such resolution.

(d) The provisions of this section shall be cumulative of all other provisions of the code relating to this subject matter.
(Code 1968, § 39-14.1; Ord. No. 83-2092, § 1, 12-28-83)

Secs. 38-16, 38-17. Reserved.

Sec. 38-18. Speed limit for trains—At crossings generally.

Except as otherwise provided in section 38-19, it shall be unlawful for any engineer or other person in charge of any locomotive, train, motor car or other vehicle for the transportation of freight or passengers by railroad to run the same onto any street crossing within the corporate limits of the city at a greater rate of speed than twenty (20) miles per hour.

(Code 1968, § 39-17; Ord. No. 86-465, § 1, 4-2-86)

Sec. 38-19. Same—At specific crossings.

Upon the portions of the railroad lines set out in this section, the maximum speed authorized for any train or vehicle operated on the rails, when entering any street crossing, is as follows:

- (1) *Maximum speed of thirty (30) miles per hour:*
 - a. Upon the Galveston, Houston and Henderson Railroad Line, which generally

parallels Harrisburg and Galveston Road, from a point one hundred (100) feet east of its intersection with 67th Street, to a point one hundred (100) feet southeast of its intersection with Park Terrace Boulevard.

- b. Upon the Houston Belt and Terminal Line, which generally parallels Hardy Street, from a point one hundred (100) feet north of its intersection with Bennington Street, and including the short connecting tracks, to the east-west Houston Belt and Terminal Line just north of the North Loop Freeway, southerly to its intersection with the Gulf Freeway near Calhoun Road. This is referred to as the "Freight Main Line."
- c. Upon the Houston Belt and Terminal Railway Line, generally parallel to and north of the North Loop, at its intersection with Hardy Street.
- d. Upon the Houston Belt and Terminal Railway Line, which generally parallels South Wayside, from its crossing by the North Loop (137) just south of Settegast Yard, in a southwesterly direction, to its intersection with the Houston Belt and Terminal Railway Line which travels in a southerly direction toward Alvin, Texas.
- e. Upon the Missouri-Kansas-Texas Railroad Company Texas Line, which generally parallels Katy Road, between its crossing of White Oak Bayou (just west of North Shepherd Drive) and a point one hundred (100) feet west of its intersection with Gessner.
- f. Upon the Missouri Pacific Line, which generally parallels Alameda Road, from a point one hundred (100) feet north of Alameda-Genoa Road to the south corporate limits of the city.
- g. Upon the Port Terminal Railroad Association Line, which lies just north of Clinton Drive, from a point one hundred (100) feet east of its intersection with McCarty Road easterly to the corporate limits of the city at Green's Bayou, excluding that portion which lies within

the City of Galena Park and Harris County.

- h. Upon the Port Terminal Railroad Association Line, which generally parallels the Houston Ship Channel, from a point one hundred (100) feet east of its intersection with 76th Street, southeasterly to the corporate limits of the City at Light Company Road, excluding that portion which lies within the Houston Navigation District.
 - i. Upon the Texas and New Orleans Railroad Line, which generally parallels Hempstead Road, from a point one hundred (100) feet south of Antoine to the north corporate limits of the city.
 - j. Upon the Texas and New Orleans Railroad Line, which generally parallels LaPorte Road, from a point one hundred (100) feet east of its intersection with Broadway easterly to the corporate limits of the city.
 - k. Upon the Texas and New Orleans Railroad Line, which generally parallels Washington Avenue and Lyons Avenue, from the midpoint between Yale Street and Heights Boulevard east to a point one hundred (100) feet east of Bringham Street.
- (2) *Maximum speed of forty (40) miles per hour:*
- a. Upon Missouri-Kansas-Texas Railway Company Texas Line, which generally parallels Katy Road from a point one hundred (100) feet west of Gessner to the corporate limits of the city.
- (3) *Maximum speed of forty-five (45) miles per hour:*
- a. Upon the joint Texas Division of the Fort Worth and Denver Railway and the Chicago, Rock Island and Pacific Railroad Line, which generally parallels West 34th Street, from its junction with the Houston Belt and Terminal Railway Line near North Shepherd Drive, westerly to a point one hundred (100) feet southeasterly of Pinemont Road.

- b. Upon the Galveston, Houston and Henderson Railroad Line, which generally parallels Galveston Road, from a point one hundred (100) feet south of Park Terrace Boulevard southerly to the corporate limits of the city, excluding the portion of such railroad line that lies within the City of South Houston.
 - c. Upon the Gulf, Colorado and Santa Fe Railroad Line, which generally parallels Mykawa Road, from its junction with the Houston Belt and Terminal Line near the intersection of Griggs Road and Long Drive southerly to a point one hundred (100) feet south of Bellfort.
 - d. Upon the Houston Belt and Terminal Railway Line, which generally parallels West Hardy Street, from its junction with the Missouri Pacific Line near Turner Drive to a point one hundred (100) feet north of its intersection with Bennington Street.
 - e. Upon the Houston Belt and Terminal Railway Line from its intersection with the Gulf Freeway near Calhoun southerly to its junction with the Gulf, Colorado and Santa Fe Railway Company Line near the intersection of Griggs Road and Long Drive.
 - f. Upon the Houston Belt and Terminal Line, which generally parallels the North Loop and 34th Street, from its crossing by the North Loop (137), just south of the Settegast Yards, westerly to its junction with the Joint Texas Division of the Fort Worth and Denver Railway and the Chicago, Rock Island and Pacific Railroad Line near North Shepherd Drive, excluding the zone which covers West Hardy Street.
 - g. Upon the Missouri Pacific Line, which generally parallels Almeda Road, from its junction with Houston Belt and Terminal Railway Line near Knight Road, southerly to a point one hundred (100) feet north of Almeda-Genoa Road.
 - h. Upon the Missouri Pacific Line, which generally parallels Shreveport Road, from its junction with the Houston Belt and Terminal Railway Line near Hirsch Road northeasterly to a point one hundred (100) feet northeast of Tidwell Road.
 - i. Upon the Texas and New Orleans Railroad Line, which generally parallels Holmes Road, from a point one hundred (100) feet west of its intersection with Long Drive westerly to a point one hundred (100) feet west of South Post Oak Road.
 - j. Upon the Texas and New Orleans Railroad Line, which generally parallels Washington Avenue, from a point one hundred (100) feet southeast of Antoine Street easterly to a point midway between Heights Boulevard and Yale Street.
 - k. Upon the Texas and New Orleans Railroad Line, which generally parallels Main Street, from a point one hundred (100) feet west of South Post Oak Road, westerly to the corporate limits of the city.
 - l. Upon the Texas and New Orleans Railroad Line, generally paralleling Hirsch Road, between a point one hundred (100) feet south of Quitman Street, and the north corporate limits of the city.
 - m. Upon the Southern Pacific Railroad line that generally parallels Westpark Drive, from the city limits to its junction with the Southern Pacific Railroad line that generally parallels Post Oak Road.
- (4) *Maximum speed of sixty (60) miles per hour:*
- a. Upon the Joint Texas Division of the Fort Worth and Denver Railway and the Chicago, Rock Island and Pacific Railroad Line, which generally parallels Randon Road and North Houston-Rösslyn Road, from a point one hundred (100) feet north of Pinemont Road northerly to the corporate limits of the city.
 - b. Upon the Gulf, Colorado and Santa Fe Railway Line, which generally parallels Mykawa Road, from a point one hundred (100) feet south of Bellfort southerly to the corporate limits of the city.

- c. Upon the Missouri Pacific Line, which goes to Beaumont, from a point one hundred (100) feet northeast of Tidwell Road to the corporate limits of the city.
- d. Upon the Texas and New Orleans Railroad Line, which parallels Liberty Road, from a point one hundred (100) feet east of Bringham to the corporate limits of the city.
- e. Upon the Missouri Pacific Line, generally parallel to West Hardy Street, from the north corporate limits of the city to its junction with the Houston Belt and Terminal Line near Turner Drive.
- f. Upon the Texas and New Orleans Railroad Line, which generally parallels Post Oak Road, from its junction with the Texas and New Orleans Railroad Line just north of Katy Road southerly to its junction with the east-west Texas and New Orleans Railroad Line near the intersection of Main Street and Holmes Road.

(Code 1968, § 39-18; Ord. No. 69-2333, § 1, 12-17-69; Ord. No. 76-896, §§ 1-5, 6-1-76; Ord. No. 85-824, § 1, 6-4-85; Ord. No. 86-465, § 2, 4-2-86; Ord. No. 87-1726, §§ 1-3, 10-7-87)

Charter reference—Authority to regulate speed of trains, Art. II, § 5, (p).

Sec. 38-19.1. Same—For first class passenger trains at specific crossings.

Upon the portions of the railroad lines set out in this section, the maximum speed authorized for any first class passenger train operated on the rails, when entering any street crossing is as follows:

- (1) *Maximum speed limit of forty-five (45) miles per hour:*
 - a. "Upon the Galveston, Houston and Henderson Railroad Line extending south from the Southern Pacific Transportation Company Railroad Line at San Jacinto Street to Park Terrace Boulevard in an alignment generally paralleling Harrisburg Boulevard on the north and State Highway No. 3 on the

south to a point 100 feet east of its intersection with 67th Street, and from a point 100 feet east of 67th Street to a point 100 feet southwest of its intersection with Park Terrace Boulevard.

- b. Reserved.

(2) *Maximum speed limit of sixty (60) miles per hour:*

- a. Upon the Texas and New Orleans Railroad Line, which generally parallels Hempstead Road, from a point one hundred (100) feet south of Antoine to the north corporate city limits of the city.
- b. Reserved.

(Ord. No. 89-1726, § 1, 11-29-89; Ord. No. 89-1786, § 1, 12-13-89)

Sec. 38-20. Same—Not restricted in absence of crossings.

Where no streets are crossed by a railroad line in the city, the speed of trains on such line is not restricted by the city.

(Code 1968, § 39-19)

Sec. 38-21. Blowing whistle.

All persons are prohibited from blowing any whistles on any locomotive, or single blasts therefrom, within the limits of the city, for a longer period of time than five (5) seconds, except when there is imminent danger of an accident.

(Code 1968, § 39-20)

Charter reference—Authority to regulate ringing of bells and blowing of whistles of trains, Art. II, § 16(p).

Cross references—Discharge of exhaust from steam engines, motor vehicles, etc., § 30-11; other restrictions on blowing of steam whistles, § 3-16.

Sec. 38-22. Restrictions on switching.

- (a) It shall be unlawful for any railroad company to use any part of Commerce Avenue for the switching of railroad freight trains between San Jacinto and York (Travis) Streets, within the corporate limits, and the violation of this section by any railroad company is hereby declared to be unlawful. Prosecution for the violation of this section may be against the yardmaster or any employee, or person in control of such train, or the

manager, or the local agent of such railroad company.

(b) Except on Saturdays, Sundays or official city holidays, it shall be unlawful to operate any railroad train over and across the railroad track crossing of the 700 to 800 blocks of North San Jacinto Street at Allen Street between the hours of 7:00 a.m. to 9:00 a.m. and between the hours of 4:00 p.m. to 6:00 p.m. without first obtaining a written permit therefor from the traffic engineer. The traffic engineer shall apply the standards established in section 45-5 of this Code in determining whether to grant or deny the application for such a permit. Prosecution for violation of this subsection shall be as provided in subsection (a) of this section.

(Code 1968, § 39-21; Ord. No. 73-1713, § 1, 8-28-73; Ord. No. 90-635, § 89, 5-23-90)

Charter reference—Authority to regulate crossings, Art. II, § 5.

Sec. 38-23. Jumping on and off or clinging to train while in motion.

It shall be unlawful for any person in the city to jump off or on, cling to or hang on any railway engine or car, while the same is in motion, such person not being a paying passenger, an employee, or an official of the railroad company.

(Code 1968, § 39-24)

Sec. 38-24. City authorized to participate in certain costs relating to street and railroad intersections.

Notwithstanding anything contained in this chapter to the contrary, the city may participate in certain costs relating to the intersections of streets and railroads. The extent, if any, to which the city will participate in said costs will be determined by city council for each individual railroad crossing or intersection. The extent of participation, if any, by the city shall be set forth in a resolution and payment of said participation will be made only after completion of said construction and approval of the actual costs by city council. In the event the city participates in such construction costs, such determination by city council will in no manner constitute grounds for postponement or delay in the completion of such

construction within the time limit set forth in said resolution.

(Code 1968, § 39-27; Ord. No. 72-331, § 1, 2-22-72)